Supreme Court, U.S.
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IN THE

Supreme Court of the United States

RAMAN PATEL, individually and as trustee of the Raman and Jashu Patel Family Trust, the Raman and Jashu Patel Residual Trust, and the Raman and Jashu Patel Survivor's Trust, JAS 4 RAY PROPERTIES, L.P., RITA PATEL, DAVID STAFFORD, and PRITA PATEL,

Petitioners,

VS.

CITY OF SANTA ROSA AND THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

WHETHER A JUDGMENT THAT WAS ENTERED IN VIOLATION OF A PARTY'S STATUTORY RIGHT TO NOTICE AND OPPORTUNITY TO BE HEARD PRIOR TO ENTRY OF JUDGMENT IS VOID PER SE UNDER THE FEDERAL DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND NOT SUBJECT TO A HARMLESS ERROR RULE?

RULE 14.1 (B) STATEMENT

Defendants-Appellants and Petitioners: Raman Patel, individually and as trustee of the Raman and Jashu Patel Family Trust, the Raman and Jashu Patel Residual Trust, and the Raman and Jashu Patel Survivor's Trust, Jas 4 Ray Properties, L.P., Rita , David Stafford, and Prita Patel

Plaintiffs and Respondents: City of Santa Rosa, a Municipal Corporation and the People of the State of California.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Raman Patel, individually and as trustee of the Raman and Jashu Patel Family TrustJ the Raman and Jashu Patel Residual Trust, and the Raman and Jashu Patel Survivor's Trust, Jas 4 Ray Properties, L.P., Rita Patel, David Stafford, and Prita Patel ("Petitioners") respectfully petition for a writ of certiorari to review the opinion of the Court of Appeal of the State of California First Appellate District Division Four filed May 25, 2010.

OPINIONS BELOW

The Order of the Supreme Court of the State of California En Banc denying Petitioners' petition for review dated September 1, 2010 is reproduced at App. A, 1a.

The Order of the Court of Appeal, First Appellate District, Division Four, denying Petitioners' petition for rehearing dated June 24, 2010 is reproduced at App. B, 2a.

The Opinion of the California Court of Appeal First Appellate District, Division Four, dated May 25, 2010, is unofficially reported at 2010 Cal. App. Unpub. LEXIS 3929, and is reproduced at App. C, 3a.

The Judgment After Bench Trial by the Superior Court of California, County of Sonoma, dated June 25, 2008 is reproduced at App. D, 22a.

The Final Statement of Decision Following Court Trial by the Superior Court of California, County of Sonoma, dated June 25, 2008 is reproduced at App. E, 27a.

JURISDICTION

The Order of the Supreme Court of the State of California En Banc denying Petitioners' petition for review was entered on September 1, 2010. This petition is timely under 28 U.S.C. § 2101(c) and Supreme Court Rule 13.1 because it is being filed within 90 days of the entry of an order of the state court of last resort denying a timely filed petition for discretionary review.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

Thus, petitioners request review of the Opinion of California Court of Appeal First Appellate District, Division Four, entered May 25, 2010.

CONSTITUTIONAL AND STATUTUTORY PROVISIONS INVOLVED

The Fourteenth Amendment of the United States Constitution, Section 1, states in pertinent part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny

> to any person within its jurisdiction the equal protection of the laws."

California Code of Civil Procedure §632 states in pertinent part:

> "In superior * * * courts, upon the trial of a question of fact by the court, written findings of fact and conclusion of law shall not be required. The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial. The request must be made within 10 days after the court announces a tentative decision unless the trial is concluded within one calendar day or in less than eight hours over more than one day in which event the request must be made prior to the submission of the matter for decision. The request for a statement of decision shall specify those controverted issues as to which party may make proposals as to the content of the statement of decision.
>
> The statement of decision shall be in writing, unless the parties appearing at trial agree otherwise; however, when the trial is concluded within one calendar day or in less than 8 hours over more than one day, the statement of decision may be made orally on the record or in the presence of the parties."

California Rules of Court, rule 3.1590(h) states in pertinent part:

> "(h) Preparation and filing of written judgment when statement of decision not prepared
>
> "If no party requests or is ordered to prepare a statement of decision and a written judgment is required, the court must prepare and serve a proposed judgment on all parties that appeared at the trial within 20 days after the announcement or service of the tentative decision or the court may order a party to prepare, serve, and submit the proposed judgment to the court within 10 days after the date of the order."

STATEMENT OF THE CASE

The Respondent City of Santa Rosa filed this action for injunctive relief under the red light abatement law in October 2005 alleging that the Petitioners were operating the Llano Motel, a motel that they owned and operated in the City of Santa Rosa, for the purposes of prostitution. App. C, 4a.

At trial, the court found in favor of the Respondents finding that the Respondents proved that the Petitioners knowingly operated a prostitution nuisance at the motel, ordered abatement of the nuisance, and imposed a civil fine in the amount of $25,000. The court also ordered the Petitioners to disgorge the illegal

profits of $70,000 they realized from charging elevated room rates. App. C, 5a.

Finally, the court found that the Petitioners engaged in unfair business practices within the meaning of the State of California Unfair Competition Law, California Business and Professions Code §17200, et seq. and ordered the Petitioners pay penalties in the amount of $409,500 based on a nine-month period of daily violations. App. C, 5a.

On June 25, 2008, the trial court entered its final statement of decision following court trial and the judgment without permitting Petitoners their 10 day statutory right to notice and opportunity to object to the judgment and statement of decision even though the court's statement recognized such a right and indicated that it would not enter judgment for 10 days to allow objections from the parties. App. C, 20a; App. D, 22a-23a; App. E, 47a.

The Petitioners filed a timely appeal to the California Court of Appeal, First Appellate District.

On May 25, 2010, the Court of Appeal issued an unpublished opinion modifying the court's judgment to reduce the amount of damages by $70,000 attributable to the disgorgement of profits, but otherwise affirmed the judgment. App. C, 3a-21a.

In affirming the judgment, the Court of Appeal Opinion found that the trial court erred in entering judgment on the same day as it filed its statement of decision instead of allowing the parties ten days in which to file any objections to the proposed judgment as required by California state law. App. C, 20a.

However, the Court of Appeal found that the error was harmless and that the petitioners failed to show that they were prejudiced and, therefore, refused to reverse the judgment. App. C, 20a.

On June 10, 2010, the petitioners filed a timely Petition for Rehearing with the court of Appeal. In the Petition for Rehearing, petitioners argued that regardless of whether the trial court's error was harmless in depriving them of their statutory right to notice and opportunity to be heard before entry of judgment, the Due Process Clause of the Fourteenth Amendment of the United States Constitution required reversal of the judgment as it was void per se and not subject to a "harmless error rule."[1]

On June 24, 2010, the Court of Appeal denied the Petition for Rehearing. App. B, 20a.

On July 7, 2010, petitioners filed a timely Petition for Review with the California Supreme Court. In the Petition for Review, Petitioners once again argued that regardless of whether the trial court's error was harmless in depriving them of their statutory right to notice and opportunity to be heard before entry of judgment, the Due Process Clause of the Fourteenth Amendment of the United States Constitution required reversal of the judgment as it was void per se and not subject to a "harmless error" rule.

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1. In fact, on appeal and in the petition for Rehearing Petitioners argued that the error was not harmless and that had they been given a chance to object to the proposed judgment they would have raised additional arguments that could not be raised on appeal for the first time.

On September 1, 2010, the California Supreme Court denied the Petition for Review. App. A, 1a.

REASONS FOR GRANTING THE PETITION

A. THE GUARANTEES OF THE PROCEDURAL COMPONENT OF THE DUE PROCESS CLAUSE ARE ABSOLUTE AND NOT SUBJECT TO HARMLESS ERROR REVIEW

The Court has long held that "[w] here a person has been deprived of property in a manner contrary to the most basic tenents of due process, 'it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits.'" *Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80, 86 (1988) (quoting *Coe v. Armour Fertilizer Works*, 237 U.S. 413, 424 (1915)).

As the Court stated in *Peralta*:

> 'Only wip[ing] the slate clean . . . would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place.'" *Peralta*, 485 U.S. at 86 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

In *Peralta*, the appellee hospital brought an action in a Texas state court against an appellant employer's guarantee of employee's debt. A default judgment was entered against the employer, the judgment was

recorded, a writ of attachment was issued, and the employer's real property was sold to satisfy the judgment. The employer initiated a bill of review in a Texas state court and sought to set aside the judgment in the state court and void the sale, alleging that, since the original service of process itself showed it was untimely made and, in fact, he had never been personally served, the judgment was void under Texas law. *Id.*, 485 U.S. at 82.

The judgment was entered for the hospital on summary judgment on the ground that it must be shown on a bill of review proceeding that the complainant had a meritorious defense to the action in which the judgment was entered, which the employer conceded he did not have. *Id.*, 485 U.S. at 82-83.

The State of Texas Court of Appeal affirmed rejecting that the meritorious-defense requirement violated his due process rights under the Fourteenth Amendment of the United States Constitution. *Id.*, 485 U.S. at 83-84.

The Texas State Supreme Court denied the employer's application for a writ of error, noting "No Reversible Error." *Id.*, 485 U.S. at 84.

The Court noted probable jurisdiction and granted review because the holding appeared problematic in light of its precedents. *Id.*, 485 U.S. at 84.

In reversing the judgment, the Court first noted its long standing principle that "failure to give notice violates the most rudimentary demands of due process

of law" *Id.*, 485 U.S. at 84-85 (internal quotation marks and citations omitted).

The Texas Courts nevertheless held, as the California Court of Appeal in this case did, that to have the judgment set aside, the appellant was required to show that he had a meritorious defense, apparently on the ground that without a defense, apparently on the ground that without a defense, the same judgment would again be entered on retrial and therefore the appellant suffered no harm from the judgment entered without notice. *Id.*, 485 U.S. at 85.

The Court firmly rejected this argument finding that the entry of the judgment itself had serious consequences because the judgment was entered on the county's records, became a lien on appellant's property, and was the basis of a writ of execution under which appellant's property was sold. *Id.*, 485 U.S. at 85-86.

As stated earlier, *Peralta* and the Court's long standing precedent clearly holds that the guarantees of the Due Process Clause are not contingent, as the Court of Appeal in this case held, subject to "harmless error" review.

Consistent with the Court's holding in *Peralta*, the Court has subsequently stated that "[b]ecause the right to procedural due process is 'absolute' in the sense that it does not depend upon the merits of a claimant's substantive assertions, and because of the importance to organized society that procedural be observed, we believe that the denial of due process should be actionable for nominal damages without proof of actual

injury [in a 42 U.S.C. § 1983 action]." *Carey v. Piphus*, 435 U.S. 247, 266 (1978).

It is undisputed that in the case at bar, the Petitioners were denied their statutory rights to notice and opportunity to be heard before judgment was entered.

While the Court of Appeal in this case found that the error was harmless, it cannot be disputed that a substantial money judgment of over $500,000 was entered against them subjecting them to the same potential recording of the judgment and writ of attachment procedures against their property that the appellant in *Peralta* suffered.[2]

Petitioners could have also raised additional objections to the proposed judgment that would have allowed them to raise additional arguments that they were foreclosed from doing so on appeal because it was not raised in the trial court.

---

2. In fact, subsequent to the entry of judgment and while the case was pending on appeal, the Respondents recorded an abstract of judgment *in* the County of Sonoma that placed a lien on Petitioners' property and Petitioners were required to purchase a bond *in* the amount of the judgment in order to avoid attachment proceedings. After the judgment became final and a remittitue issued in the Court of Appeal, Respondents requested payment on the modified judgment amount of $434,000 from the surety company.

As in *Peralta*, the demands of the Due Process Clause and the Court's holdings demand no less than a reversal of judgment.

CONCLUSION

Based on the foregoing, Petitioners respectfully request that this Petition for Writ of Certiorari be granted.

DATED: November 23, 2010

Respectfully submitted,

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APPENDIX

APPENDIX A — ORDER OF THE SUPREME COURT OF CALIFORNIA FILED SEPTEMBER 1, 2010

Court of Appeal, First Appellate District,
Division Four - No. A122151

S184228

IN THE SUPREME COURT OF CALIFORNIA

En Banc

CITY OF SANTA ROSA ET AL.,

Plaintiffs and Respondents,

v.

RAMAN D. PATEL ET AL.,

Defendants and Appellants.

The petition for review is denied.

George
Chief Justice

APPENDIX B — ORDER OF THE COURT OF APPEAL FIRST APPELLATE DISTRICT DATED JUNE 24, 2010

COURT OF APPEAL
FIRST APPELLATE DISTRICT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
DIVISION 4

A122151
Sonoma County No. SCV237667

CITY OF SANTA ROSA,

Plaintiff and Respondent,

v.

RAMEN PATEL et al.,

Defendants and Appellants.

BY THE COURT:

The petition for rehearing is denied.

Date: JUN 24 2010 /s/ _____ P.J.

APPENDIX C — OPINION OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FIRST APPELLATE DISTRICT DIVISION FOUR FILED MAY 25, 2010

COURT OF APPEAL OF THE
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

A122151
(SONOMA COUNTY SUPER. CT. NO. SCV-237667)

CITY OF SANTA ROSA et al.,

Plaintiffs and Respondents,

v.

RAMAN D. PATEL et al.,

Defendants and Appellants.

OPINION

The Patels[1] appeal from a judgment following a court trial entered in favor of the City of Santa Rosa (the City) and the People of the State of California in this action under the red light abatement law (Pen. Code, § 11225

1. The Patels are: Raman D. Patel, individually and as trustee of the Raman D. and Jashu R. Patel Family Trust, Raman D. and Jashu R. Patel Residual Trust and Raman D. and Jashu R. Patel Survivor's Trust, and as General Partner of the Jas 4 Ray Properties, L.P., Rita Patel, David Stafford, and Prita Patel.

et seq.). They contend that the trial court erred in: (1) striking their cross-complaint; (2) awarding civil penalties under Business and Professions Code section 17206, subdivision (a); (3) ordering that the Patels disgorge alleged illegal profits; and (4) entering judgment at the same time it rendered its final statement of decision. They also argue that the City lacked standing to bring this action, and that the court erred in awarding red light abatement remedies. We modify the court's judgment to reduce the amount of damages attributable to the disgorgement of profits, but otherwise affirm.

FACTUAL BACKGROUND

The City filed this action for injunctive relief under the red light abatement law in October 2005 alleging that the Patels were operating the Llano Motel for the purposes of prostitution. Following the filing of the action, the parties entered into a stipulation and order for a preliminary injunction which included the Patels' agreement to demolish the motel within certain time limitations. In a prior appeal, we addressed the trial court's award of attorney fees following litigation concerning the Patels' violation of the stipulation and order for a preliminary injunction. (*Patel v. Jakela, Inc.* (December 31, 2009, A121611 [nonpub. opn.] (*Patel I*)) As set forth in that opinion, the Patels failed to demolish the motel as they had agreed in the stipulation. (*Id.* at p. 2.) As a result, the City proceeded with the demolition as it was authorized to do per the terms of the stipulation. (*Ibid.*) The motel was demolished prior to trial in 2007. (*Ibid.*)

Appendix C

This appeal addresses the trial on the City's complaint alleging violations of the red light abatement law and unfair business practices. Based on the evidence adduced at trial, the court found that in late 2004 and 2005, the Llano Motel became a "'hooker haven'"–"the go-to-prostitution-destination in Sonoma County." The Patels failed to respond to the complaints about the nuisance being maintained on their property and profited from the increased room rates they charged prostitutes and pimps, realizing a minimal profit of $70,000 from the higher rates charged. The court found that the City proved that the Patels knowingly operated a prostitution nuisance at the Llano Motel, ordered abatement of the nuisance, and imposed a civil fine in the amount of $25,000. The court also ordered the Patels to disgorge the illegal profits of $70,000 they realized from charging elevated room rates. Finally, the court found that the Patels engaged in unfair business practices within the meaning of the unfair competition law (UCL), Business and Professions Code section 17200, and ordered that the Patels pay penalties in the amount of $409,500 based on a nine-month period of daily violations. This appeal followed.

DISCUSSION

A. The Patels' Cross-Complaint.

The Patels contend that the trial court erred in granting the City's motion to strike their cross-complaint.

Appendix C

1. Procedural background

The City filed its complaint in this action on October 26, 2005. The Patels answered the complaint on January 6, 2006, and the matter was set for trial on October 6, 2006. The matter was subsequently reset to March 2, 2007 and then to July 13, 2007. On January 22, 2007, the City moved for leave of court to file an amended complaint to add a cause of action under the UCL, Business and Professions Code section 17200, et seq. to allege a claim for unfair business practices. The City subsequently filed an amended first complaint to add the People of the State of California as a plaintiff. On February 21, 2007, the court granted the City's motion. The Patels demurred to the first amended complaint on February 28, 2007. The court overruled the demurrer. On May 4, 2007, the Patels answered the first amended complaint and, in addition, filed a cross-complaint. The City and the People (collectively, the City) moved to strike the complaint on the ground that the Patels failed to seek leave of court to file it in violation of Code of Civil Procedure section 428.50. Jakela, Inc. and Daniel O. Davis, Inc., respondents in *Patel I*, filed a separate motion to strike the cross-complaint. Before a hearing on the motions could be held, the Patels removed the action to federal court, but that court eventually remanded the matter back to the trial court and awarded sanctions to the City, finding that the Patels' action in removing the case to federal court was "vexatious and frivolous."

The hearing on the motions to strike was eventually held on October 31, 2007. The trial court granted the motions, finding that the Patels had not obtained leave of court to file the cross-complaints. We review the court's order for abuse of discretion. (*Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 612.)

2. Analysis

The Patels argue that they were not required to seek leave of court to file the cross-complaint because it was authorized under Code of Civil Procedure section 428.50, subdivision (a) (section 428.50). Section 428.50, however, does not provide for the filing of a cross-complaint under the facts here.

Section 428.50 provides as follows: "(a) A party shall file a cross-complaint against any of the parties who filed the complaint or cross-complaint against him or her before or at the same time as the answer to the complaint or cross-complaint. [¶] (b) Any other cross-complaint may be filed at any time before the court has set a date for trial. [¶] (c) A party shall obtain leave of court to file any cross-complaint except one filed within the time specified in subdivision (a) or (b). Leave may be granted in the interest of justice at any time during the course of the action."

Under the statutory scheme, "[s]ubdivision (a) addresses compulsory cross-complaints, those related to the subject matter of the underlying complaint which

exist at the time of service of the answer to the complaint on the particular plaintiff." (*City of Hanford v. Superior Court* (1989) 208 Cal.App.3d 580, 586-587.) It is not applicable here, where the Patels answered the underlying complaint in December 2005 and the trial date had already been set. Since the Patels' cross-complaint was not a compulsory one and was not filed before the court set the first trial date, it was a permissive cross-complaint, and hence leave of court was required. As explained in *Loney v. Superior Court* (1984) 160 Cal.App.3d 719, 722, section 428.50 "allows filing [of a crosscomplaint] without leave of court only before a trial date is set. If the Legislature had intended to extend the time for filing in cases where a trial date is set and then vacated, it could have done so expressly." The *Loney* court further explained the practical considerations of allowing permissive cross-complaints to be filed only until the time of the first trial date. (*Id.* at p. 723.) By the time a case is set for trial, "it may be assumed that the original parties have engaged in discovery and investigated the applicable law and facts, and have learned of any new parties or additional causes of action that should be included in the litigation. Thus, the assignment of the first trial date becomes a logical point at which to cut off the right to file cross-complaints bringing in new parties without permission of court." (*Ibid.*)

Here, the trial date had already been set at the time the Patels filed their cross-complaint. Consequently, it was incumbent upon the Patels to seek leave of court to file their cross-complaint. The rationale for section

428.50 is particularly apt here where the Patels not only sought to bring new causes of action but to add numerous new parties including the City's police department, the mayor, a council member, 18 police officers, and the city attorneys prosecuting the complaint. The allegations in the Patels' cross-complaint also related in whole or in part to actions that allegedly took place in 2006 and 2007, after the filing of their answer in 2005 and hence cannot be considered a compulsory cross-complaint. "To be considered a compulsory cross-complaint, a related cause of action must have existed at the time of the service of [the defendant's] answer to [the] complaint." (*Crocker Nat. Bank v. Emerald* (1990) 221 Cal.App.3d 852, 864.) As the Patels did not seek leave of court to file their cross-complaint, the court properly granted the City's motion to strike it.

B. Business and Professions Code section 17206, subdivision (a)

1. The trial court did not abuse its discretion in awarding penalties for the Patels' unlawful business practices.

The Patels contend that the trial court erred in awarding the City civil penalties under Business and Professions Code section 17206 because there were no presently occurring or ongoing violations of unfair competition. They argue that because the motel had already been demolished and there was not a continuing threat of harm to the public, the court should have

denied the request for penalties. The Patels recognize that the court rejected this argument based on the statutory language of Business and Professions Code section 17206, subdivision (a) which provides that "[a]ny person who engages, *has engaged*, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action . . . ." but argue that principles of equity dictate that penalties should be imposed only for ongoing or threatened activity.

Nonetheless, relying on *Mangini v. Aerojet General Corp.* (1991) 230 Cal.App.3d 1125, they argue that relief under the UCL requires ongoing conduct. *Mangini* was decided before the 1992 amendments to section 17206 which changed the statutory language to read as set forth above to provide for penalties to any person who "engages, has engaged or proposes to engage in unfair competition." "The 1992 amendments overruled former case law that had limited the statute's application. (Citation.) . . . ." (*Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 570.) The Patels' reliance on *Mangini* is thus misplaced.

Inasmuch as the trial court found that the Patels "knowingly condoned, enabled, and operated a red light nuisance, willfully failed to do what was necessary to abate that nuisance, and creatively found a way to profit from it [by engaging in an unfair rental practice of charging prostitutes higher motel room rates far beyond prevailing market rates]," penalties under Business and

Professions Code section 17206 were mandatory. "Section 17206, subdivision (a), requires a court to impose a penalty for each unlawful business practice committed." (*Hewlett v. Squaw Valley Ski Corp.* (1997) 54 Cal.App.4th 499, 537.)

2. The City had standing to bring the UCL cause of action.

Section 17204 requires, in pertinent part, that actions alleging unfair competition be prosecuted "by a city attorney of a city having a population in excess of 750,000, or by a city attorney in a city and county *or, with the consent of the district attorney, by a city prosecutor in a city having a full-time city prosecutor in the name of the people of the State of California upon their own complaint . . . .*"

Here, the record establishes that the Sonoma County District Attorney's Office authorized the Santa Rosa City Attorney's Office to proceed with a Business & Professions Code section 17200 cause of action against the Patels. The Patels' belated attempt to challenge the City's standing to bring this action is without merit.

3. Substantial evidence supports the trial court's finding of unfair business practices.

The Patels argue that there was no evidence presented that their practice of charging higher rental rates to prostitutes threatened or harmed competition. The record, however, shows that the Patels maintained

a house of prostitution at the Llano Motel in 2004 and 2005 resulting in a public nuisance. Contrary to the Patels' argument, the City was not required to prove that competitors or similarly situated businesses were harmed by the Patels' unfair rental practices. " 'Section 17200 "is not confined to anticompetitive business practices, but is also directed toward the public's right to protection from fraud, deceit, and unlawful conduct. [Citation.] Thus, California courts have consistently interpreted the language of section 17200 broadly." [Citation.] " 'The statute imposes strict liability. It is not necessary to show that the defendant intended to injure anyone.' " ' (*Paduano v. American Honda Motor Co., Inc.* (2009) 169 Cal.App.4th 1453, 1468.) The evidence adduced at trial was overwhelming that between 2004 and 2005, the Patels charged prostitutes excessive rents and allowed them to use the motel to engage in prostitution to the detriment of the community. The court properly found that their conduct constituted unfair competition within the meaning of section 17200.

4. The penalties imposed were not unreasonable.

The Patels contend that the penalties imposed were unreasonable and oppressive. We review the court's award for abuse of discretion. (*People v. First Federal Credit Corp.* (2002) 104 Cal.App.4th 721, 733.)

Section 17206 requires that the court impose a penalty for each violation of unfair competition. (*People*

v. First Federal Credit Corp., *supra*, 104 Cal.App.4th at p. 732; *Hewlett v. Squaw Valley Ski Corp.*, *supra*, 54 Cal.App.4th at pp. 536-537.) Specifically, the court may impose "a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation . . . . [¶] (b) . . . In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including . . .: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth." (§ 17206, subds. (a) and (b).) It is within the discretion of the court to determine what constitutes a violation; penalties under the statute are determined on a case-by-case basis. (*Hewlett*, *supra*, at p. 537; *People ex rel. Kennedy v. Beaumont Investment, Ltd.* (2003) 111 Cal.App.4th 102, 127.)

The Patels rely on language in *People v. Casa Blanca Convalescent Homes, Inc.* (1984) 159 Cal.App.3d 509, 516, 523, 534 where the court determined that although the UCL authorized a $2,500 sanction for each violation, it would be unreasonable and oppressive to impose the penalty in that case where there were over 1,000 failures to keep adequate patient records in violation of nursing home regulations. The court noted, however, that it would be "equally unreasonable" to count all of the violations of a particular rule or regulation and count them as one violation. (*Id.* at pp. 534-535.) The court therefore assessed $2,500 for each of 67 violations,

aggregating certain types of violations into a single act. (*Ibid.*)

Here, the court found, and the evidence supported that the Patels charged unfair rental prices for a period of almost twelve months from November 2004 to October 2005. The court determined that at a minimum, the Patels benefited from nine months of unfair motel occupancy revenue, and that the daily violations were "serious, protracted, and willful." The court further found that the Patels had sufficient assets to pay "appropriate" penalties. Although the court found that the Patels committed multiple daily violations by renting to numerous prostitutes, it "conservatively calculate[d] the penalties based upon a nine-month period" and set a daily penalty rate of $1,500. Thus, the court imposed penalties of $409,500 (39 weeks multiplied by 7 days per week or 273 days multiplied by $1,500). Based on the evidence before it, we cannot conclude that the court abused its discretion in its award of statutory penalties. The court could well have imposed the statutory amount of $2,500 per violation considering the number of violations, their duration, and the Patels' willfulness in maintaining the nuisance.

5. Disgorgement of profits.

Section 17203 grants the court authority to make orders or judgments "as may be necessary to prevent the use of employment by any person of any practice which constitutes unfair competition . . . *or as may be necessary to restore to any person in interest any*

money or property, real or personal, which may have been acquired by means of such unfair competition. Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204 and complies with Section 382 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state."

"An order that a defendant disgorge money obtained through an unfair business practice may include a restitutionary element, but is not so limited. As in this case, such orders may compel a defendant to surrender all money obtained through an unfair business practice even though not all is to be restored to the persons from whom it was obtained or those claiming under those persons. It has also been used to refer to surrender of all profits earned as a result of an unfair business practice regardless of whether those profits represent money taken directly from persons who were victims of the unfair practice." (*Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 127 (*Kraus*).)

The *Kraus* court, however, limited the disgorgement remedy of section 17203 to UCL actions certified as class actions. (*Kraus*, *supra*, 23 Cal.4th at p. 137.) The court declined to extend the remedy in a fluid recovery context – the payment of damages over to a class fund and disbursement to individual class members to compensate for damage he or she has suffered–in an

UCL action that was not certified as a class action but was a private representative action brought on behalf of persons in addition to the plaintiff. (*Id.* at pp. 121, 126 and fn. 10, 127.) The court noted that the Legislature had not "expressly authorized fluid recovery in UCL actions, where restitution to a person in interest is the only monetary remedy for violation of the UCL described in section 17203." (*Id.* at p. 128.) Further, the court recognized that it had "never construed section 17203 as authorizing an order for disgorgement into a fluid recovery fund, or held that such an order may be made as an exercise of the court's equitable power." (*Id.* at p. 133.)

While this action is not a private representative action under the UCL, but a representative action brought on behalf of the People, the Court reiterated in *State of California v. Altus Finance* (2005) 36 Cal.4th 1284, 1304-1305, fn. 7, an action by the Attorney General pursuing a civil remedy under the UCL, that a disgorgement remedy was not authorized "outside the class action context." Consequently, the trial court's order here for disgorgement of the profits of $70,000 for a restorative justice program for prostitutes and their customers cannot be upheld under section 17203. As the court ordered the disgorgement remedy concurrent with the identical order under the red light abatement law, we next consider whether the order is appropriate under that law.

Appendix C

C. Red Light Abatement Law (Penal Code, §11225 et seq.)

The red light abatement law provides that "[e]very building or place used for the purpose of illegal gambling . . . . ; lewdness, assignation, or prostitution, and every building or place in [which such acts] are held or occur, is a nuisance which shall be enjoined, abated, and prevented, and *for which damages may be recovered*, whether it is a public or private nuisance." (Pen. Code, § 11225, italics added.) Penal Code section 11230 authorizes the court to order abatement of the nuisance including directing the closing of the building for a period of one year, or in lieu thereof if closure would create a nuisance or otherwise be harmful to the community, the payment of damages. (Pen. Code, § 11230, subd. (a).) Finally, subdivision (b) of section 11230 allows a court to "assess a civil penalty not to exceed twenty-five thousand dollars ($25,000) against any and all of the defendants, based upon the severity of the nuisance and its duration."

The Patels argue that since the motel was demolished before trial, the court lacked authority to order civil penalties or disgorgement of profits. They rely on language in *Mallon v. City of Long Beach* (1958) 164 Cal.App.2d 178, 190 where the court stated, "[i]f, therefore, at the time of the order or judgment, in the absence of special circumstances, which are not here involved, there is no reasonable probability that past acts complained of will recur, injunctive relief will be denied. Injunctive power is not used as punishment for

past acts and is ordered against them only if there is evidence they will probably recur." The *Mallon* court, however, also recognized that an injunction should not issue against a party who has in good faith abated the condition that was the subject of the complaint. (*Ibid.*)

Mallon is of no import here where the Patels failed to exercise good faith in abating the nuisance. *People v. McGonigle* (1942) 56 Cal.App.2d 17 is instructive. There, the court rejected the argument that a remedy under the red light abatement law was erroneous because the defendant had voluntarily abated the nuisance before trial. The court determined that abatement of the nuisance ten days prior to the filing of the complaint did not preclude the court from ordering that the hotel the defendant operated for the purposes of prostitution be closed pursuant to the provisions of the statute. (*Id.* at pp. 18-20.)

Similarly, here, remedies under the red light abatement law are appropriate given the Patels' bad faith and delay in abating the nuisance. The record demonstrates that it was not until the City filed its complaint, that the Patels agreed by stipulation to abate the nuisance. And then they reneged on the agreement, forcing the City to litigate the stipulation in both the trial court and on appeal. Under these circumstances, the court acted well within its authority in ordering civil penalties of $25,000 under Penal Code section 11230, subdivision (a)(4) against the Patels for maintaining the nuisance. As the trial court found, the City proved that the Patels knowingly condoned, enabled and operated

a prostitution nuisance at the motel and that the nuisance was of great severity and long duration. Given the record, the court's assessment of a civil penalty was justified.

We, however, have found no authority for the court's imposition of a disgorgement remedy under the red light abatement law. Penal Code section 11225 provides that the court may award damages against a party for maintaining a public or private nuisance, but there is nothing in the statutory scheme providing for restitution or disgorgement of profits. *People v. Superior Court* (1973) 9 Cal.3d 283, 286 (*Jayhill*), cited by the court as supporting an equitable remedy here, recognized the court's inherent equitable powers to restore the *status quo* and order restitution to customers defrauded by various sellers of encyclopedias.[2] (*Id.* at p. 286.) The court, however, held that an award of exemplary damages was inappropriate in the absence of explicit statutory authorization. (*Id.* at p. 287.)

Here, the red light abatement law does not provide for restitution or disgorgement. It is well settled that the " ' "[c]ourts will not impose penalties for

---

2. The court noted that the Legislature amended Business and Professions Code section 17535 after the filing of the action to provide that " '[t]he court may make such orders or judgments . . . which may be necessary to restore to any person in interest any money or property . . . which may have been acquired by means of any practice in this chapter declared to be unlawful.' " (*Id.* at p. 287, fn. 1.)

noncompliance with statutory provisions in addition to those that are provided expressly or by necessary implication." ' [Citations.]" (*People ex rel. Van de Kamp v. American Art Enterprises, Inc.* (1983) 33 Cal.3d 328, 334.) In light of the clear statutory scheme, we decline to extend the remedies available under the statute. We therefore modify the judgment to reduce the amount of damages by $70,000, the sum attributable to the disgorgement of profits.

D. Statement of Decision and Judgment

The court entered judgment on the same day as it filed its statement of decision instead of allowing the parties ten days in which to file any objections to the proposed judgment. (See Cal. Rules of Court, rule 3.1590 (h).) The error was harmless; the Patels have not shown they were prejudiced. (See *In re Marriage of Steiner & Hosseini* (2004) 117 Cal.App.4th 519, 524-525 [error in prematurely signing judgment not reversible where no prejudice was shown.]

DISPOSITION

The judgment is modified to reduce the monetary award to $434,500 ($504,500 - $70,000–the amount attributable to the disgorgement of profits). In all other respects, the judgment is affirmed. The City to recover its costs on appeal.

Appendix C

RIVERA, J.

We concur:

RUVOLO, P.J.

READON, J.

APPENDIX D — JUDGMENT OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA DATED JUNE 25, 2008

HONORABLE MARK TANSIL
SUPERIOR COURT OF CALIFORNIA
SONOMA COUNTY JUVENILE COURT
600 Administration Drive
Santa Rosa, CA 95403
(707) 521-6722

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

CASE NO: SCV-237667

CITY OF SANTA ROSA, PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiffs,

v.

RAMN D. PATEL, individually and as trustee of the Raman D. and Jashu R. Patel Family Trust, Raman D. And Jashu R. Patel Residual Trust and Raman D. And Jashu R. Patel Survivor's Trust, JAS 4 RAY PROPERTIES, L.P., RITA PATEL, DAVID STAFFORD, PRITA PATEL and DOES 3-20,

Defendants.

Appendix D

JUDGMENT AFTER BENCH TRIAL

This action came on regularly for trial on March 5, 2008, in Department 18 of the Superior Court, the Honorable Mark Tansil presiding. Michael J. Casey, Assistant City Attorney for the City of Santa Rosa, appeared as attorney for plaintiffs, and Frank A. Weiser appeared as attorney for the defendants.

A bench trial was required by law. The court heard and considered the testimony, the documentary evidence, and the argument of counsel. The matter having been submitted for decision, and the court having issued its statement of decision,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Plaintiffs, City of Santa Rosa and the People of the State of California, recover judgment on the merits against defendants, Raman Patel, individually and as trustee of the Raman D. and Jashu R. Patel Family Trust, Raman D. and Jashu R. Patel Residual Trust and Raman D. and Raman D. and Jashu R. Patel Survivor's Trust; Jas 4 Ray Properties, L.P.; Rita Patel; David Stafford; and Prita Patel in the amount of $504,500; and

2. Plaintiffs recover against defendants attorneys' fees in the amount of $_____.

and

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3. Plaintiffs recover against defendants costs in the sum of $_____.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that,

4. The defendants, their lessees and/or their agents, are perpetually enjoined from directly or indirectly maintaining, permitting or allowing any prostitution nuisance at the property located at 2400 Santa Rosa Avenue, Santa Rosa, California 95407; APN# 044 041 066.

Dated: June 25, 2008

/s/_____
JUDGE OF THE SUPERIOR COURT

Appendix D

PROOF OF SERVICE BY MAIL

I certify that I am an employee of the Superior Court of California, County of Sonoma, and that my business address is 600 Administration Drive, Room 107-J, Santa Rosa, California, 95403; that I am not a party to this cause; that I am over the age of 18 years; that I am readily familiar with this office's practice for collection and processing of correspondence for mailing with the United States Postal Service; and that on the date shown below I placed a true copy of the foregoing attached papers in an envelope, sealed and addressed as shown below, for collection and mailing at Santa Rosa, California, first class, postage fully prepaid, following ordinary business practices.

Date: June 25, 2008

Denise L. Gordon
COURT EXECUTIVE OFFICER
by /s/_____

Deputy Clerk

—ADDRESSEES—

BLUESTONE, MARSHALL E
SENEFF FREEMAN & BLUESTONE LLP
50 OLD COURTHOUSE SQ STE 401/PO BOX 3729
SANTA ROSA, CA 95404

Appendix D

CASEY, MICHAEL J
ASSISTANT CITY ATTORNEY
PO BOX 1678
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WEISER, FRANK
ATTORNEY AT LAW
3460 WILSHIRE BLVD STE 903
LOS ANGELES, CA 90010

APPENDIX E — FINAL STATEMENT OF DECISION FOLLOWING COURT TRIAL OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SONOMA DATED JUNE 25, 2008

Honorable Mark Tansil
Judge of the Superior Court of California
1450 Guerneville Road, Bldg. G
Santa Rosa, CA 95403
Telephone: (707) 521-6722

Superior Court of the State of California
County of Sonoma

Case No. SCV-237667

CITY OF SANTA ROSA, AND PEOPLE OF THE STATE OF CALIFORNIA

Plaintiffs,

vs.

RAMAN PATEL, INDIVIDUALLY AND AS TRUSTEE OF THE RAMAN AND JASHU PATEL FAMILY TRUST, THE RAMAN AND JASHU PATEL RESIDUAL TRUST, AND THE RAMAN AND JASHU PATEL SURVIVOR'S TRUST, JAS 4 RAY PROPERTIES, L.P., RITA PATEL, DAVID STAFFORD, AND PRITA PATEL,

Defendants.

FINAL STATEMENT OF DECISION FOLLOWING COURT TRIAL

Appendix E

INTRODUCTION

This is a case about how motel proprietors let prostitution overrun their hospitality business for approximately twelve months during the end of 2004 and most of 2005. While the City of Santa Rosa (the City) was victimized by the crime occurring at the motel, the business owners of this distressed property reaped a substantial financial profit.

As they made money from enhanced revenues received from prostitutes and pimps, the property owners shirked their responsibility to eradicate the on-site nuisance. In the end, this is a story of motel occupants run amok, where the motel owners turned a blind eye toward the disarray, necessitating expensive government intervention.

The court heard over 30 witnesses in this municipal prosecution of red light violations and unfair business practices. Having read the final briefing and considered the trial evidence, the court issues the following statement of decision:

A HAVEN FOR PROSTITUTION

Prostitution is an ancient business practice. Consistent with its nature as a vice, prostitution's longevity hasn't spawned legitimacy. One of the most impressive witnesses in this trial was Norma Hotaling, a former prostitute and the executive director of SAGE, a successful San Francisco outreach program, helping

both prostitutes and johns (the paying customers in the sex trade). In her testimony, Ms. Hotaling completely refuted the common fallacy that prostitution is a victimless crime. She graphically described how the prostitutes themselves are significantly harmed by this degrading and often violent activity. Further, she documented the unreasonable price extracted from johns and their families, the surrounding neighborhoods, and the entire community by those who profit from this unsavory enterprise. Prostitution's quick exchange of cold cash for fleeting satisfaction pays little heed to longer-lasting harmful impacts.

Brian Whitford, the City's motel taxation expert, testified that most American cities have a red light avenue (a hooker business zone). According to all of the police witnesses in this case, in Santa Rosa, California, that street is named for the City itself: Santa Rosa Avenue. For as long as the officers can remember, "the working girls" have strolled the avenue. The illegal solicitations have required an appropriate police presence and frequent arrests. And, of course, many of the police contacts have involved prostitution's sister crimes of drug abuse, money theft, and personal assault. The City, and hence the taxpayers, have been forced to foot the bill for the heightened level of patrol and investigation.

The Llano Motel was located at 2400 Santa Rosa Avenue smack in the heart of the prostitution trade. The motel was owned by the defendants Raman Patel, Rita Patel, Prita Patel, David Stafford, and Jas 4 Ray Properties, L.P.

Appendix E

For many years, the Llano Motel was just one of the lower-end motel properties on the avenue. While the owners paid motel occupancy taxes on time, they did little to maintain and improve the property. The City police were required to make frequent trips to the motel and its immediate environs to investigate crime and keep the peace. The motel earned a reputation as a good place to meet prostitutes and drug dealers.

Things changed dramatically for the worse toward the end of 2004. The prostitutes that used to tender their business openly on the sidewalks suddenly moved most of their activities onto motel property within the less visible confines of guest rooms and the L-shape driveway. This made the crimes harder for the police to surveil, particularly given the parcel's configuration and its enclosure by other small businesses. It gave johns and prostitutes a false sense of privacy.

Illegal conduct boomed at the Llano Motel. Internet Web sites proclaimed the motel's status as the go-to-prostitution-destination in Sonoma County. Scantily clad women advertised their professional services from motel doorways, and johns circled the lot, shopping for sexual adventure. Sometimes, there was a big traffic jam. Sometimes, there was a line of male customers standing outside of a motel room. Occasionally, a taco truck sold food to the multitudes. It was a circus; it was out of control.

Unlike the Llano's long history of a lesser involvement in prostitution (and its many related problems) and

unlike the less serious difficulties being experienced at other nearby distressed motels, the illegal scene at the Llano Motel between November of 2004 and October of 2005 was unique on Santa Rosa Avenue. This motel had become a "hooker haven."

The entire avenue was affected. Business employees and members of the public began to complain about the blatant and notorious prostitution.

PROFITING FROM PROSTITUTION

What became obvious to the police was that the large scale problem could not exist without at least the tacit approval of both motel management and ownership. So police officers talked to the motel managers, Arthur Savano and Kellie Richardson, and to the owners, the Patels and David Stafford. The police described the messy details of the nuisance and demanded prompt corrective action.

While the managers acknowledged the existence of the prostitution at the motel, the Patels feigned ignorance. Apparently everybody in town knew about the motel's status as a brothel except the owners.

But for a 2-3 week closure of the motel during early 2005 after ownership was summoned to the police department, the Patels simply put a band-aid on the worsening problems. According to the motel managers and to Tracy Martinez (a prostitute who lived at the motel on-and-off for many years), the Patels just ordered

that the prostitution activities be toned down or made less evident.

As they went through the motions of cleanup, the Patels profited handsomely from the increased room rates that they intentionally charged pimps and prostitutes during this 12-month period in 2004 and 2005. Brian Whitford testified that the struggling property showed a real turnaround at this time, when the motel owners realized a minimal profit of $70,000 from these jacked up rents. This change in fortune occurred after the Patels ordered their managers to strictly charge pimps and prostitutes much higher nightly rates (rates twice as high, payable per person-not per room). Almost on a daily basis, Rita Patel appeared in her Jaguar at this seedy motel to pick up the day's receipts and the customer logs. At home, she prepared detailed financial records for the family business.

Other competing distressed properties didn't get this lucrative windfall, because they were not in a position to gain greater profits in exchange for providing a safe haven for prostitution. Customers who used to be regular guests at the inn, such as seasonal farm workers, were priced out of this market. The higher occupancy rates were clearly inconsistent with the amenities available at the Llano, unless the occupant was primarily looking for a comfortable place to practice prostitution. And all the while, the local neighborhood was forced to suffer this uninvited insult, as the Patels made money by milking the nuisance.

Appendix E

THE POLICE RAID AND THE COURT ACTION

The Patels could have followed the advice of their friend, the retired Oakland police officer-Jeffrey Hassna, who recommended that the Patels stop the practice of renting rooms to known prostitutes and become close allies with the Santa Rosa Police Department in a serious effort to end the nuisance. Instead, the Patels were largely uncooperative with law enforcement, leading to the ultimate decision by the police to bust the brothel on October 22, 2005. Twelve hookers were contacted at the motel on that date with tools of the trade, e.g., assorted condoms-used and unused. The managers were arrested, and business records were seized. Without a doubt, the owners' behavior was the antithesis of voluntary self-abatement.

The motel continued to rent rooms for a short time to consumers, other than single females. The City filed its red light abatement action on October 26, 2005, under Penal Code section 11225. As a part of the priority action, the City first obtained a temporary injunction and later a preliminary injunction. The injunctions prevented, among other things, defendants' operation of a motel on the property. Also, pursuant to the preliminary injunction, the Patels stipulated to the actual demolition of the motel. With consent of the Sonoma County District Attorney, the City later added a cause of action under Business and Professions Code section 17200.

At some point, defendants appeared to have abandoned any interest in a speedy resolution of this case. New

counsel for defendants appealed the injunctive orders. That appeal was dismissed as being untimely. A federal case was filed by defendants, and a federal judge put that case on hold. Without leave of court, defendants filed a ten million dollar cross-complaint against multiple parties, including the City, its police officers, and others. Before a hearing to strike the pleading could occur, defendants unilaterally removed the state case to federal court. A federal judge rejected this legal maneuvering, imposing bad faith sanctions on defendants. The case was returned to state court for trial.

Meanwhile, the Patels' property at 2400 Santa Rosa Avenue sat fenced and unproductive for over two years. The motel has been demolished. The City was forced to tear down the building, when defendants reneged on their promise to demolish the motel in a timely manner.

The case was tried as a court trial beginning on March 5, 2008, and ending on March 25, 2008. At the outset of the trial, the City filed a brief setting forth legal authority for the proposition that this equitable lawsuit should be tried as a bench trial. Defense counsel filed no opposition, and he never made any request for a jury during the trial. Additionally, neither party posted a jury fee, which constitutes a waiver of any right to a jury trial under local court rules and a state statute. See, Sonoma County Rules of Court, Rule 4.8 and Code of Civil Procedure section 361(d)(5).

Post-trial briefing was requested by the court. The final brief was received from the City on April 24, 2008, and

the matter was then taken under submission.

At the end of oral argument, the court told the parties that the facts of this case were fairly easy to analyze. The City's factual case was well organized and quite credible. On the other hand, the court announced that all four individual defendants, unfortunately, lied to the court on material points. The defendants unquestionably lied when they testified that they were unaware that their business had been overrun by prostitution in 2004 and 2005. When pressed during questioning, Rita Patel played intriguing word games, saying that she occasionally had some concerns about "the riffraff and the low element." Moreover, the defendants were untruthful in testifying that the managers were given exclusive discretion to set motel occupancy rates. This was patently unbelievable.

The court found the defendants' overall testimony to be untrustworthy. Not surprisingly, the City's rendition of the facts is more convincing and persuasive. The more challenging proposition is what are the appropriate remedies for the proven red light violations and unfair business practices.

RED LIGHT ABATEMENT

"The abatement of nuisances is a long established and well recognized exercise of the state's police power." See, *People (Van de Kamp) vs. American Art Enterprises, Inc.* (1983) 33 Cal. 3rd 328, 337 (dissenting opinion of Justice Reynoso). The current civil case was initially

prosecuted under the authority of Penal Code section 11225. That section states that "every building or place ... used for the purpose of ... prostitution, and every building or place in or upon which acts of ... prostitution, are held or occur, is a nuisance which shall be enjoined, abated, and prevented ...." This kind of equitable action specifically provides for the possibility of an order of abatement, a civil penalty, damages, temporary closure of the property, and a perpetual injunction. See, Penal Code sections 11226, 11227, and 11230. Also, costs for investigation and discovery and reasonable attorney's fees are recoverable by the prevailing party in a red light abatement action, under Civil Code section 3496(b).

The earlier version of the red light abatement law, which was under review in *People (Van de Kamp) vs. American Art Enterprises, Inc., supra,* 33 Cal.3rd at page 333, didn't include authorization for a monetary fine or damages. The court noted that "it is well settled that courts will not impose penalties for noncompliance with statutory provisions in addition to those that are provided expressly or by necessary implication." (The court contrasted an equitable order of restitution with an order for exemplary damages, i.e., a civil penalty.) *Id.* at page 334.

The red light statute now requires the court to order the abatement of a proven nuisance and authorizes imposition of "a civil penalty not to exceed $25,000 against *any and all* of the defendants, based upon the severity of the nuisance and its duration." See, Penal Code sections 11225 and 11230(b). The legislative history

of AB 1868, the 2002 amendment that added the statutory penalty, reveals a legislative intent to empower courts to order "the defendant or defendants to pay a civil penalty of up to $25,000." Further, this history indicates that "the civil fine is up to $25,000 for a nuisance property."

The City has proven that the Patels were knowingly condoning, enabling, and operating a prostitution nuisance at their Llano Motel from late 2004 through most of 2005. The court therefore officially orders the abatement of this nuisance.

As previously discussed, the nuisance was of great severity and long duration. The defendants were on full notice as to the need to swiftly correct the problems, but instead they merely tried to hide the obvious and chose to profit from the illegal circumstances. The court imposes the maximum civil penalty of $25,000 against all of the defendants. The obligation is joint and several.

Although damages are recoverable under section 11225, the City didn't offer proof of traditional damages. Namely, the City didn't prove that an individual or a business suffered a particular loss as a result of the red light violations that creates an entitlement to monetary relief. See, Civil Code sections 3281 and 3282. And it is unlikely that the City would ask that the pimps and prostitutes receive a rental rebate.

Nonetheless, the City has asked that the court order the defendants to disgorge the illegal profits made off

of the intentionally elevated room rates, which were calculated to be a minimum of $70,000 by the expert on motel revenues, Brian Whitford.

The red light statute doesn't address either restitution or non-restitutionary disgorgement. But as mentioned above, the statute does authorize an award of damages. When damages were added as a possible remedy in 1983, the legislative history discloses that the relevant amendment was part of the Crime Victim Restitution Program, which sought to "increase the amount of money available to compensate victims of crime by assessing damages against the operators of public nuisances."

In this civil matter prosecuted by the City Attorney, the question is whether the red light statute, explicitly or implicitly, bars the court's invocation of the equitable remedy of disgorgement. Unless there is a legislative bar, the court should be able to order this kind of common equitable relief. See, *People vs. Superior Court (Jayhill Corporation)* 9 Cal.3rd 283, 287. Disgorgement would have remedial benefits in the present case. The defendants should not be allowed to keep the $70,000 in ill-gotten gains. Payment to the plaintiff would enable the municipality to potentially develop a restorative justice program for hookers and johns, such as San Francisco County's model program (described in great detail by Ms. Hotaling in her trial testimony). That would materially aid the people most directly victimized by the sex trade and benefit the whole community as well by reducing recidivism.

Appendix E

Consistent with the legislative goal of assisting victims of crime, the court orders defendants to disgorge the $70,000 in illegal profits obtained from the end of 2004 and the time of the police raid in October of 2005. These were the profits derived from increased rates intentionally charged to pimps and prostitutes. The order will be concurrent with what the court does on the same issue under Business and Professions Code section 17203 (which will be discussed later). The disgorged money is payable directly to plaintiff for the creation of a victims' fund.

The next possible remedy for consideration is temporary closure of the property. Section 11230 states that, if the court orders an abatement of property as a prostitution nuisance, the court then shall also order the closure of the property "for a period of one year, unless sooner released." The City argues that the one-year closure is mandatory. In *People (Van de Kamp) vs. American Art Enterprises, Inc., supra*, 33 Cal.3rd at 333 (footnote 8), the court explained that, while this language sounds mandatory, a court has discretion "not to close the premises if the court finds closure inappropriate under the particular circumstances of the case."

Because of the delayed trial of this matter, defendants' property has already been closed and idle for over two years. What would be gained by additional down time? This would not be good for either the defendants or the community. The court will order that 2400 Santa Rosa Avenue, the former home of the Llano Motel, be immediately released for lawful use and development by defendants.

Finally, as a part of a red light abatement action, there is the issue of whether a perpetual injunction should be issued against the defendants, ordering that they never allow a red light nuisance to reoccur at the property in question. Defendants contend that a further injunction isn't necessary, because the motel has been torn down. Countering this practical point are the following concerns: a) this property still sits in the middle of the City's red light zone, b) the defendants were persistently dishonest about their connection with the former prostitution activities at the property, and c) the defendants ultimately failed to follow through on their stipulated promise to demolish the building. Consequently, the court will perpetually enjoin defendants from allowing a prostitution nuisance to ever return to 2400 Santa Rosa Avenue.

UNFAIR BUSINESS PRACTICES

California's unfair competition statute protects "both consumers and competitors by promoting fair competition in commercial markets for goods and services." See, *Kasky vs. Nike, Inc.* (2002) 27 Cal. 4th 939, 949; see also, Business and Professions Code section 17200. The City has alleged that the defendants engaged in unfair competition by purposefully charging pimps and prostitutes much higher motel room rates for a period of about one year.

This rental practice was unfair in regard to other struggling low-end motels and to consumers in need of cheaper nightly rates. Other distressed properties

weren't making money off of a public nuisance. Low-income workers that had routinely stayed at this motel couldn't compete with the higher paying pimps and prostitutes. Intentional catering to these criminals artificially raised rates and revenue beyond normal market dynamics for this kind of motel. That was unfair to competitors and consumers alike.

And the public suffered too. Conveniently, the defendants indicate that a couple of people (Jeffrey Hassna and Officer Michael Tosti) advised raising room rates to deter prostitution and to change the nature of the clientele. If defendants' conduct were really some kind of "experiment in raising rates," it did nothing but further turn the motel into a brothel. That would have been *quickly* apparent to the savvy business owners who kept detailed customer records; any purported good faith rental strategy was rapidly eviscerated by the growing criminal reality clearly observable on the motel grounds-a reality that went unabated for months. And, if defendants really believed that this rental practice was legitimate, why did they lie about who set those more lucrative rates? And, if defendants truly wanted to drive the prostitutes away through higher rent, why weren't rates progressively raised to the point where the haven became unaffordable even to the cash-flush hookers? Under these arrangements, prostitution flourished to the detriment of the community; while a distressed property made an unusual turnaround, a serious nuisance was prolonged.

The above conduct was unfair competition under the law. The rental practice was unfair, because it was

"immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers." See, *People vs. Casa Blanca Convalescent Homes, Inc.* (1984) 159 Cal.App.3rd 509, 530. The utility of defendants' conduct was thoroughly outweighed by the gravity of harm to competitors and consumers. Moreover, the business practice "significantly threatened or harmed competition." See, *Cel-Tech Communications, Inc. vs. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 700, 186-187.

The remedies available under the unfair competition law have been called "cleansing powers." In this case, the City seeks civil penalties, disgorgement of illegal profits, and an injunction.

The party seeking civil penalties under section 17206 must have proper standing. Although defendants surprisingly raised a standing issue in a post-trial statement of controverted matters (having been completely silent on this topic during the trial), it is abundantly clear that the City has standing through the consent of the Sonoma County District Attorney. See, the order overruling defendants' demurrer to the first amended complaint in this case filed on April 27, 2007, wherein the court made a specific finding of standing. (The City also recently presented a letter from the Sonoma County District Attorney's Office confirming the consent). The real party in interest in the second cause of action is, therefore, the State of California.

These civil penalties are civil remedies-not criminal penalties. *See, People vs. EWAP, Inc.* (1980) 106 Cal.App.3rd 315, 323. While section 17200 is a strict liability statute, the facts before the court show that the City actually proved beyond a reasonable doubt that defendants knowingly condoned, enabled, and operated a red light nuisance, willfully failed to do what was necessary to abate that nuisance, and creatively found a way to profit from it. The proprietors' guilty mind was transparent; for example, the defendants mendaciously stated that they gave their unsophisticated motel managers unbridled discretion to raise nightly occupancy rates, precisely, because the defendants knew that the rate hikes in question were made in bad faith.

If violations are proven in a case prosecuted for the State of California, penalties are mandatory. See, *People vs. Custom Craft Carpets* (1984) 159 Cal. App. 3rd 679, 686. And there is no requirement that the violations be presently occurring. See, section 17206 ("any person who engages, *has engaged*, or proposes to engage in unfair competition").

The maximum penalty for each violation is $2500. See, section 17206(a). The statutory factors to consider in assessing the penalty are the following: "the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the misconduct, and the defendants' assets, liabilities, and net worth." See, section 17206(b).

Appendix E

The bad faith rental practice spanned a period of almost twelve months from November 2004 through October 22, 2005, excluding only the 2-3 week motel closure in early 2005. At a minimum, defendants benefitted from nine months of unfair motel occupancy revenue. These daily violations were serious, protracted, and willful. As was demonstrated at trial, the defendants have sufficient assets to pay appropriate penalties.

The court will conservatively calculate the penalties based upon a nine-month period of daily violations. The daily penalty rate will be $1500. The total penalty award is $409,500 (39 weeks multiplied by 7 days a week equals 273 days; 273 days multiplied by $1500 equals $409,500).

Every day during this time frame, the motel knowingly provided unscrupulous business accommodations for multiple prostitutes (a safe work site in exchange for higher daily occupancy rates). While the court could have greatly expanded the total number of violations by counting not just days, but rather the number of "working guests" renting rooms per night, that approach would have unnecessarily escalated the amount of the penalties. The court believes that the above calculations reflect a reasonable, objective determination of penalties in a situation of extended business wrongdoing.

The court has already discussed the remedy of disgorgement of illegal profits in the context of the red light abatement. This issue is more complicated as a possible remedy under Business and Professions Code section 17203.

Appendix E

In California, complete disgorgement of illegally obtained profits has been "a common remedial goal" in public prosecutions pursuant to section 17203. See, *Kraus vs. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 147-148 (dissent by Justice Werdegar). It is true that the *Kraus* majority held that non-restitutionary disgorgement can't be ordered in a private representative action. See, *Id.* at page 121. And the same is true for a lawsuit brought by a private individual. See, *Korea Supply Co. vs. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1140.

But the current action is prosecuted publicly by the City of Santa Rosa. Disgorgement in this case would provide strong remedial benefits and would significantly help the community impacted by the unfair business practices. Certainly, the court is aware of footnote #7 in the opinion of *State of California vs. Altus Finance, S.A.* (2005) 36 Cal.4th 1284, 1304. If that footnote is not *dictum* on this subject, then disgorgement under the 17203 theory must fail. Assuming the issue is still open to argument, the court believes that this time-honored remedy in a public prosecution has merit distinctive from a private action.

As indicated earlier, the court will order defendants to disgorge the $70,000 in illegal profits made from manipulating their nuisance in 2004 and 2005. This order is concurrent with the identical order made in conjunction with the red light abatement. The debt is payable to plaintiff to fund proactive, restorative services for both prostitutes and johns.

Finally, the City seeks to further enjoin defendants from repeating their unfair business practices. Since the motel has been demolished, the court doesn't believe that it is reasonable to conclude that there is a continuing threat of harm to the public, i.e., harm from the likely resurrection of the motel rental practice that catered to prostitution. The request for an injunction under section 17204 is respectfully denied.

CONCLUSION

The defendants' self-serving conduct created and sustained a nuisance of prostitution at their Santa Rosa motel. The scale of the nuisance was such that law enforcement was forced to intervene. The defendants had ample opportunities to help the police promptly resolve the problems. Instead, the defendants opted to seize the moment to generate personal profit.

In summary, the court finds that defendants operated a nuisance under Penal Code section 11225 and that they engaged in unfair competition under Business and Professions Code section 17200. Judgment is for plaintiff. The court orders that the red light nuisance will be abated and that the defendants will, jointly and severally, pay plaintiff a total of $504,500 in combined statutory penalties and disgorged profits. Except for the concurrent disgorgement orders, all other financial awards are cumulative. And injunctive relief is granted under the red light law.

The prevailing party is the City. It is anticipated that the City will timely litigate any requests for costs and attorney's fees after the filing of judgment. See, California Rules of Court, Rules 3.1700 and 3.1702.

The City filed a request for a statement of decision on May 21, 2008. Each party has been given ten days, from the date of the above request, to specify new controverted issues or to make proposals as to the content of the statement of decision. The court has considered comments received from both sides.

The court also asked the City to prepare a proposed form of judgment, including precise language for the injunction, and the City has complied with the request. Following the court's issuance of the statement of decision, along with a proposed judgment, the parties will have ten days, after service, to make any objections. Within ten days of the expiration of the time for possible objections, the court will enter judgment, giving notice to all litigants. See, Code of Civil Procedure section 632; see also, California Rules of Court, Rule 3.1590.

Date: June 25, 2008

/s/

MARK TANSIL
Judge of the Superior Court

Appendix E

PROOF OF SERVICE BY MAIL

I certify that I am an employee of the Superior Court of California, County of Sonoma, and that my business address is 600 Administration Drive, Room 107-J, Santa Rosa, California, 95403; that I am not a party to this cause; that I am over the age of 18 years; that I am readily familiar with this office's practice for collection and processing of correspondence for mailing with the United States Postal Service; and that on the date shown below I placed a true copy of the foregoing attached papers in an envelope, sealed and addressed as shown below, for collection and mailing at Santa Rosa, California, first class, postage fully prepaid, following ordinary business practices.

Denise L. Gordon
COURT EXECUTIVE OFFICER

by /s/_____
Deputy Clerk

Date: June 25, 2008

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